

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES OF AMERICA,

Plaintiff,

v.

INDUSTRIAL EXCESS LANDFILL, INC.;
B.F. GOODRICH COMPANY;
BRIDGESTONE/FIRESTONE, INC.; HYMAN
BUDOFF; GENCORP INC.; GOODYEAR
AEROSPACE CORPORATION; GOODYEAR
TIRE AND RUBBER COMPANY; HYBUD
EQUIPMENT CORPORATION; CHARLES
KITTINGER; MERLE KITTINGER;
KITTINGER TRUCKING COMPANY; MORGAN
ADHESIVES COMPANY; PPG INDUSTRIES,
INC.;

Defendants.

CIVIL NO. 5:89 CV 1988

JUDGE MANOS

FIRST AMENDED COMPLAINT

The United States of America, by and through the undersigned attorneys, by authority of the Attorney General of the United States and at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), alleges that:

STATEMENT OF THE CASE

1. This is a civil action for declaratory relief, recovery of costs and imposition of civil penalties and punitive damages brought pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9606 and 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"). The

United States seeks to recover costs incurred for response, remedial and investigative activities undertaken in response to the release or threatened release of hazardous substances at an approximately 30-acre landfill located in Uniontown, Ohio, known as the Industrial Excess Landfill ("I.E.L.") Site (the "Site"). The United States also seeks the imposition of civil penalties and punitive damages upon persons who failed to comply with an order issued pursuant to Section 106(a) of CERCLA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 106(a), 106(b) and 113(b) of CERCLA, 42 U.S.C. Sections 9606(a), 9606(b) and 9613(b), and 28 U.S.C. Sections 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. Section 9613(b), and 28 U.S.C. Section 1391(b) and (c) because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

DEFENDANTS

4. Defendant Industrial Excess Landfill, Inc. is an owner or operator of the Site, and was an owner or operator during part of the time that hazardous substances were disposed of at the Site. Defendant Hyman Budoff owns or controls, directly or indirectly, the stock of, and is president and chief executive officer of, Industrial Excess Landfill, Inc. Hyman Budoff is an

owner or operator of the Site. Defendants Charles Kittinger and Merle Kittinger were former owners of the Site during part of the time that hazardous substances were disposed of at the Site. Defendants Charles Kittinger and Kittinger Trucking Company were each an operator of the Site during part of the time that hazardous substances were disposed of at the Site.

5. Defendants B.F. Goodrich Company, Bridgestone/Firestone, Inc., GenCorp Inc., Goodyear Aerospace Corporation, Goodyear Tire and Rubber Company, Morgan Adhesives Company, and PPG Industries, Inc. are each persons, within the meaning of Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21), who by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by each such defendant at the Site.

6. Defendants Hybud Equipment Corporation and Kittinger Trucking Company are each persons, within the meaning of Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21), who accepted hazardous substances for transport to disposal or treatment facilities or sites selected by them, and transported such hazardous substances for disposal or treatment at the Site.

THE SITE

7. The IEL Site consists of approximately 30 acres and is located on Cleveland Avenue in Uniontown, Stark County, Ohio. From approximately 1967 to 1980, it was operated as a landfill. A variety of industrial, commercial and household wastes,

including solid and liquid hazardous wastes, were disposed of at the Site.

8. In October 1984, the Site was placed on the National Priorities List, 40 C.F.R. Part 300, Appendix B, which is a national list of hazardous waste sites posing the greatest threat to health, welfare and the environment. The National Priorities List is established pursuant to Section 105(a) of CERCLA, 42 U.S.C. Section 9605(a).

9. Pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604, beginning in December 1985, U.S. EPA undertook removal actions to abate the release and substantial threat of release of hazardous substances from the Site.

10. Pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604, in December 1984, U.S. EPA began a Remedial Investigation and Feasibility Study ("RI/FS") at the Site to investigate and determine the nature and extent of contamination at the Site.

11. Prior to completion of the RI/FS, U.S. EPA determined that residential drinking water wells in the vicinity of the Site might become contaminated before an overall remedy for the Site could be implemented. On September 30, 1987, U.S. EPA issued a Record of Decision to provide an alternative water supply to approximately 100 homes near the Site as an operable unit of the overall remedy.

12. On or about August 13, 1987, U.S. EPA requested a number of potentially responsible parties ("PRPs"), including Defendants B.F. Goodrich Company, Bridgestone/Firestone Inc.,

Goodyear Aerospace Corporation, Goodyear Tire and Rubber Company, GenCorp, Inc., Hyman Budoff and Charles Kittinger to submit a good faith proposal for the design and construction of the operable unit. None of the PRPs submitted such a proposal.

13. U.S. EPA issued a Unilateral Administrative Order under Section 106 of CERCLA on December 9, 1987, requiring eight persons, including Defendants B.F. Goodrich Company, Bridgestone/Firestone Inc., Goodyear Aerospace Corporation, Goodyear Tire and Rubber Company, Industrial Excess Landfill, Inc., Hybud Equipment, Inc. and Kittinger Trucking Company ("Respondents") to design and construct the operable unit.

14. On January 29, 1988, U.S. EPA issued an Amended Unilateral Administrative Order ("Amended Order"), superseding the Order issued on December 9, 1987. The Amended Order required the Respondents to design and construct the operable unit, and to submit to U.S. EPA and Ohio EPA within 60 days a work plan for remedial design and remedial action for the operable unit.

15. Section XII of the Amended Order warned Respondents that, pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), violation or subsequent failure or refusal to comply with the Amended Order, or any portion thereof, might subject Respondents to a civil penalty for each day in which such violation occurred, or such failure to comply continued.

16. Defendants/Respondents B.F. Goodrich Company, Bridgestone/Firestone Tire, Inc., Goodyear Aerospace Corporation and Goodyear Tire and Rubber Company timely submitted a work plan

for the operable unit and are engaged in remedial design/remedial action for the operable unit.

17. Defendants/Respondents Industrial Excess Landfill, Inc., Hybud Equipment, Inc. and Kittinger Trucking Company have not submitted a work plan or engaged in remedial design/remedial action for the operable unit since issuance of the Amended Order.

18. The RI/FS for the Site was completed in December 1988. It demonstrated that groundwater at and downgradient of the Site is contaminated with hazardous substances, including vinyl chloride and barium. The RI/FS also demonstrated that surface soils and sediments at and near the Site are contaminated with hazardous substances.

19. Based on information collected during the RI/FS, U.S. EPA selected a final remedy in a Record of Decision that was issued on July 17, 1989.

20. There were and are releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22), and the threat of continuing releases, of hazardous substances into the environment at the Site.

21. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

22. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), have been disposed of at the Site.

FIRST CLAIM FOR RELIEF

23. Paragraphs 1 - 22 are realleged here and incorporated by reference.

24. Section 107(a) of CERCLA, U.S.C. Section 9607(a), provides, in pertinent part:

- (1) the owner and operator of a vessel . . . or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, . . .
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances. . .
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities . . . or sites selected by such person, . . .

. . . shall be liable for--

- (A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan

25. The United States has incurred and will continue to incur response costs not inconsistent with the National Contingency Plan, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. Section 9605, and codified at 40 C.F.R. Part 300, et seq. Such costs include the costs for removal and remedial actions as defined in Sections 101(23), 101(24) and 101(25) of CERCLA, 42 U.S.C. Sections 9601(23), 9601(24), and 9601(25), and costs authorized by Section 104 of CERCLA, 42 U.S.C. Section

9604, to respond to the release or threatened release of hazardous substances at the Site.

26. Each defendant is jointly and severally liable to the United States for all its response costs, including the costs of removal and remedial actions and prejudgment interest, incurred in the past or to be incurred in the future at the Site.

SECOND CLAIM FOR RELIEF

27. Paragraphs 1 - 22 are realleged here and incorporated by reference.

28. Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), provides that any person who, without sufficient cause, willfully violates, or fails or refuses to comply with any order of the President under section 106(a) of CERCLA may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

29. Defendants Industrial Excess Landfill, Inc., Hybud Equipment, Inc. and Kittinger Trucking Company have, without sufficient cause, failed or refused to comply with the Amended Order issued by U.S. EPA pursuant to CERCLA Section 106(a), 42 U.S.C. Section 106(a), and are therefore liable for fines of not more than \$25,000 per day for each day of violation.

THIRD CLAIM FOR RELIEF

30. Paragraphs 1 - 22 are realleged here and incorporated by reference.

31. Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provides that any person who is liable for a release or threat of release of a hazardous substance who fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 106 of CERCLA may be liable to the United States for punitive damages of an amount at least equal to, and not more than three times, the amount of any costs incurred by the Superfund as a result of such failure to take proper action.

32. Defendants Industrial Excess Landfill, Inc., Hybud Equipment, Inc. and Kittinger Trucking Company have, without sufficient cause, failed to properly provide removal or remedial action required by the Amended Order issued by U.S. EPA pursuant to CERCLA Section 106(a), 42 U.S.C. Section 106(a), and are therefore liable to the United States for punitive damages of an amount at least equal to, and not more than three times, the amount of costs incurred and to be incurred by the Superfund as a result of their failure to take proper action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that the Court:

1. Award the United States a judgment against the

defendants, jointly and severally, for all costs incurred by the United States in connection with the Site;

2. Award the United States a declaratory judgment that the defendants will be jointly and severally liable for future costs incurred by the United States in connection with the Site;

3. Assess civil fines against each Defendant Industrial Excess Landfill, Inc., Hybud Equipment, Inc. and Kittinger Trucking Company of not more than \$25,000 for each day of violation of the Amended Order issued by U.S. EPA;

4. Assess punitive damages against Defendants Industrial Excess Landfill, Inc., Hybud Equipment, Inc. and Kittinger Trucking Company of an amount at least equal to, and not more than three times, the amount of costs incurred and to be incurred by the Superfund as a result of their failure to take proper action;

5. Award the United States its costs and fees in this action; and

5. Grant such other and further relief as is appropriate.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned certifies that a copy of Plaintiff's First Amended Complaint was served upon the following attorneys by U.S. mail, postage pre-paid, on this 23d day of February 1990, addressed to:

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